

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-21275
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on July 2, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On January 29, 2009, claimant filed an application for Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits alleging disability.

(2) On March 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 24, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 19, 2009, the State Hearing Review Team again denied claimant's application and requested additional medical information.

(6) Claimant refused to go to an additional psychiatric evaluation for the State Hearing Review Team, but did offer two prescriptions one dated January 24, 2008 and one dated March 2, 2009 with a copy of her medications and problems listed.

(7) The hearing was held on July 2, 2009. At the hearing, claimant waived the time periods and requested to submit her two prescriptions.

(8) The additional prescriptions were submitted on July 13, 2009 and sent to the State Hearing Review Team for further review.

(9) On July 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.29 and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this.

(10) Claimant is a 40-year-old woman whose birth date is [REDACTED]

Claimant is 5' 6" tall and weighs 180 pounds. Claimant recently gained 25 pounds. Claimant is a high school graduate and has trouble with reading and sloppy spelling but is able to add and county money. Claimant testified that she was in special education for reading.

(11) Claimant last worked December 2005 inspecting parts. Claimant also has worked as a waitress for 15 years.

(12) Claimant alleges as disabling impairments: depression, degenerative disc disease, bipolar disorder, anxiety, arthritis, scoliosis, and a bone spur.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the Social Security Administration determined that claimant was not disabled under sections 216(i) and 223(d) of the Social Security Act and was not disabled under section 1614(a)(3)(A) of the Social Security Act. The claimant has not been disabled within the meaning of the Social Security Act at any time from the alleged onset date through the date of the decision. The Administrative Law Judge determined that claimant would be disabled if she stopped substance use (20 CFR 404.1520(g) and 416.920(g)). Claimant's substance use disorder is a contributing factor material to the determination of disability pursuant to 20 CFR 404.1535 and 416.935. This Administrative Law Judge finds that the Social Security Administration's determination is controlling in this case but will proceed through the sequential evaluation process for the sake of argument.

The objective medical evidence on the record indicates that on examination of [REDACTED] [REDACTED] the clinical impression was that claimant was stable and that she could occasionally lift 20 pounds or less, but never lift 25 pounds or more. Claimant did not need assistive devices for ambulation and she was able to do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities but could not operate foot and leg controls with either lower extremity because she has disc disease and left ankle pathology. Claimant had some limits in her comprehension, memory, sustained concentration, and social interaction based upon her bipolar disorder and significant anxiety (pp. 17-18).

A Medical Needs form indicates that claimant is ambulatory and does not need special transportation and did not need anybody to accompany her to her medical appointments and did not have a medical need for assistance with any of her personal care activities (p. 19).

A Mental Residual Functional Capacity Assessment indicated that claimant was markedly limited in almost all areas of functioning. The Residual Functional Capacity Assessment was on [REDACTED]. A [REDACTED] initial psychiatric evaluation indicates that claimant has primarily abused alcohol. She was admitted to [REDACTED] for 30 days of inpatient rehab. She was well groomed and dressed, cooperative with good eye contact and attention span. She was soft spoken, minimally spontaneous, underproductive and unpressured speech. She was oriented to person, place, and time. There was mild psychomotor retardation. No tremor, tic, or dyskinetic movements observed. She reported being 5' 6" tall and 160 pounds; she used to be 175 pounds. She was able to name the current president and the two before him. She stated there are 52 weeks and 365 days in a year, 52 states in the United States, and was able to spell the word "WORLD" forward and backward without any hesitations. Recollection of five numbers forward was accurate; backward was 4/5. Immediate recall of three color-coded objects took a couple of attempts; however, in the end delayed recollection of three color-coded was 3/3. Her three wishes were for the court problems to go away, to be happy, to be with her family, and to live a healthy lifestyle. She was diagnosed with a bipolar disorder and generalized anxiety disorder as well as alcohol dependence in early remission, cocaine abuse in remission, nicotine dependence, and borderline personality traits (pp. 36-37).

Claimant was in the hospital in [REDACTED] for an overdose. Claimant testified that she used to use cocaine and stopped using cocaine [REDACTED] and stopped drinking two bottles of wine per week [REDACTED]. Claimant did testify that she does continue to smoke a pack of cigarettes every three days and her doctor has told her to quit and she is not in a smoking cessation program. Claimant is not in compliance with her treatment program as she continues to smoke despite the fact that her doctor has told her to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

A psychological evaluation report dated [REDACTED] indicates that claimant has been dysfunctional most of her life. She was not very truthful with her responses. She stated that she was not comfortable in a crowd but she was able to go [REDACTED] meetings and parenting classes where she has to interact with a group of people. She did not display any signs of anxiety during her evaluation. She gave lots of details about her life history. The report indicates that if claimant remained free of alcohol and drugs and continued her court ordered treatment, she would most like make some improvement and gain more insight into her condition. Her past history and current behavior was not consistent with someone who suffers from bipolar disorder but a woman who suffers from dysthymic disorder which is aggravated by her substance abuse problem. Her prognosis was guarded because of her unstable lifestyle in the past due to poor judgment. She has not had periods of decompensation but she may relapse on drugs and alcohol when faced with stressful situations and her current GAF was 63.

A [REDACTED] medical examination indicates that claimant was awake and alert and she had no apparent distress. Her head was normocephalic and atraumatic and her neck was supple. Her pupils were equal and round and reactive to light, 3-2 mm bilaterally. Extraocular muscles were intact. Her face was symmetric. Tongue was midline. Facial sensation was intact in dermatomes V1, V2, and V3. Hearing was grossly intact to finger rub bilaterally. Strength was 5/5 in the bilateral upper extremities including deltoids, biceps, triceps, wrist extension, hand grip, and hand intrinsics and 5/5 in bilateral lower extremities including iliopsoas, hamstrings, quadriceps, dorsiflexion, and plantar flexion. Sensation was grossly intact to pinprick and light

touch. Deep tendon reflexes were 2+ and Achilles, patellar, biceps, triceps and brachioradialis. She had no Hoffmann and no clonus. She had an MRI of her lumbar spine on [REDACTED] which showed an annular tear at the L4-5 with a posterior disc bulge at that level. There was a very small central disc protrusion at L5-S1. Overall, she had no franc herniated disc and no foraminal stenosis and she had mild facet disease. Also of note, she had degenerative disc disease at L4-5 and L5-S1 (p. 63).

A second Medical Examination Report in the file dated [REDACTED] indicates that claimant could occasionally lift 20 pounds and she was stable. She did not need assistive devices for ambulation and that she can use her upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating but could not operate foot or leg controls (p. 72).

At Step 2, the claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. The Social Security Administration has determined that claimant has the following severe impairments: panic attacks, bipolar disorder, and drug and alcohol abuse (20 CFR 404.1520(c) and 416.920(c)). This determination is controlling.

At Step 3, claimant does not have an impairment or combination of impairments that meet or mildly equal any of the impairments listed in 20 CFR, Part 404, Subpart P, Appendix 1. Claimant has had one to two episodes of decompensation and she overdosed [REDACTED] while smoking cocaine that was laced with opiates. When regard to concentration, persistence, or pace, claimant has moderate difficulties. During a mental examination claimant was able to recite six digits forward and six digits backward. Her associations of thinking were easy to follow. (Social Security Administration determination) Claimant's limitations did not cause at

least two marked limitations or one marked limitation and repeated episodes of decompensation and therefore her impairments do not meet any Listing.

Claimant last worked as a waitress and as a parts inspector. Claimant retains the residual functional capacity to perform light or sedentary work even with her impairments. Her past work was light as a waitress. Claimant would probably be able to perform her past relevant work if she stopped her substance abuse. Claimant testified on the record that she can walk 75 feet, stand for 15 minutes at a time, and sit for 10-15 minutes at a time. Claimant testified she could shower and dress herself and that her pain is 7 out of 10 without medication and 4 out of 10 with medication.

This Administrative Law Judge finds that claimant is disqualified from receiving disability at Step 4. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant does retain bilateral manual hand dexterity. Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant has stated that she has a bipolar disorder and anxiety.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, claimant did refuse to attend a psychiatric evaluation which the State Hearing Review Team did request. Claimant was able to answer all the questions at the hearing and was responsive to all the questions. Claimant was oriented to time, person and place during the hearing. In addition, based upon complaint's medical reports, it is documented that she has heavy use of alcohol as well as crack cocaine which would have contributed to her physical and any alleged mental impairments.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain

if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file that claimant has a history of alcohol, tobacco, and drug abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. 20 CFR 404.1520(g) and 416.920(g). 20 CFR 404.1535 and 416.936. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that even if claimant did meet the disability definition under Steps 1 through 5, she would not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. In addition, claimant did testify that she does receive some relief from her pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 40), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 21, 2009

Date Mailed: September 21, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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